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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1124**

Kathleen Harasyn,
Relator,

vs.

Hennepin Home Health Care Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 15, 2019
Affirmed
Smith, John, Judge*
Dissenting, Jesson, Judge**

Department of Employment and Economic Development
File No. 36341641-3

Kathleen Harasyn, Spring Lake Park, Minnesota (pro se relator)

Hennepin Home Health Care Inc., Brooklyn Park, Minnesota (respondent employer)

Lee B. Nelson, Anne B. Froelich, Minnesota Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Johnson, Presiding Judge; Jesson, Judge; and Smith,
John, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We affirm the unemployment law judge's holding that relator was ineligible for unemployment benefits because the record does not support a sufficiently "good reason" for the relator to quit and become unemployed.

FACTS

Kathleen Harasyn began working for Hennepin Home Health Care Inc. (HHHC) in July 2012. In performance reviews, Harasyn was described as generally being a good worker, but was chatty and would interrupt other people's work because of her conversations. One review stated that she should "focus on job tasks" and do "less socializing." CEO Amelia Mata noted that Harasyn had issues with loud personal conversations at work and that people in the office had complained about her chattiness. At one point, Harasyn had to be moved to her own office because her discussions distracted other employees.

In February 2018, Harasyn was absent for two days because of illness. The day she returned, she chatted with one of her co-workers about the flu before going to speak with her supervisor about a new project. Mark Mata, co-owner of HHHC, followed Harasyn into her supervisor's office and shut the door. Mr. Mata yelled at Harasyn, emphasizing that while she had been out sick there were people in the company who were overloaded with work, that she should be focused on work because of her two-day absence, and that if she couldn't do that she could "f---ing" leave. Mata told Harasyn that he was giving her a verbal warning. The next day, Harasyn gave her supervisor her two weeks' notice.

That evening, Harasyn posted several messages to her Facebook page stating that she was leaving her job; that it felt like she was “ending a bad relationship”; and that quitting “ha[d] been a long time in coming.” Amelia Mata was shown Harasyn’s Facebook posts the following week. In a meeting with Ms. Mata, Harasyn admitted to making the Facebook posts and that she had been looking for other jobs prior to quitting because she was unhappy and the job had not met her expectations. Because Harasyn worked with sensitive client information and Ms. Mata was worried about the safety of the information, Ms. Mata immediately fired Harasyn.

Harasyn applied for unemployment benefits. The Department of Employment and Economic Development (DEED) rejected her application, determining that she was ineligible to receive benefits because she was discharged within 30 days of her intended quit date and did not qualify under any exceptions. Harasyn appealed, noting that she felt threatened and that she had been singled out by Mr. Mata on other occasions. At a hearing with an unemployment-law judge (ULJ), Harasyn described several instances when Mr. Mata said things that made her uncomfortable. In one instance, Mr. Mata said “good, it’s about time” in response to Harasyn leaving on vacation. Another time, Harasyn saw Mr. Mata’s dog walking back and forth and commented that it might need to go outside. Mr. Mata responded, saying “maybe she’s trying to tell you it’s time to leave.”

Harasyn’s supervisor testified at the hearing. He noted that it was company practice to shut the door during performance-related conversations and that, while Mr. Mata’s behavior was unreasonable, it was not his normal practice and he didn’t think Mr. Mata was endangering Harasyn.

Following the hearing, the ULJ determined that Harasyn quit, that she was ineligible for benefits, and that she did not qualify under any of the exceptions listed in Minnesota Statutes, section 268.095, subdivision 1 (2018). Harasyn requested reconsideration, and the ULJ upheld the decision.

Harasyn appeals.

DECISION

We will not disturb a ULJ's decision unless it is based on a legal, factual, or procedural error that prejudiced a party's substantial rights. Minn. Stat. § 268.105, subd. 7(d) (2018). We review a ULJ's findings of fact in the light most favorable to the decision, relying on findings that are substantially supported by the record. *Fay v. Dep't of Emp't & Econ. Dev.*, 860 N.W.2d 385, 387 (Minn. App. 2015). We review de novo the ULJ's determination that an applicant is ineligible for benefits. *Id.*

A person who quits her employment is ineligible for unemployment benefits unless a statutory exception applies. Minn. Stat. § 268.095, subd. 1. Because Harasyn was discharged within 30 days of her intended quit date, she is considered to have quit on her intended date of quitting. *Id.*, subd. 5(d) (2018).

Harasyn argues that an exception applies because she quit for a good reason caused by the employer. A "good reason caused by the employer" is a reason:

- (1) that is directly related to the employment and for which the employer is responsible;
- (2) that is adverse to the worker; and
- (3) that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.

Id., subd. 3(a)(1)-(3) (2018). To qualify under the good-reason exception, an individual must show that a reasonable worker would be compelled to quit and become unemployed rather than remain in the job. *Id.*, subd. 3(a)(3).

Harasyn argues that the ULJ erred by making insufficient findings on both the reasonable-person standard and the conduct Harasyn found threatening. Neither argument is convincing. The ULJ based her decision on the reasonable-person standard, noting that none of the conduct witnessed by Harasyn would be sufficient for a reasonable person to quit. The ULJ also evaluated the employer's allegedly threatening conduct and found that Harasyn's subjective belief that she was threatened, without additional evidence that Mr. Mata was going to physically harm her, was insufficient to provide a good reason caused by the employer to quit.

When viewing the facts in the light most favorable to the decision, the ULJ did not err in concluding that a reasonable person would not quit and become unemployed under Harasyn's circumstances. Mr. Mata's outburst was unreasonable and inappropriate, but it was isolated and in response to a known issue with Harasyn's job performance. Although Harasyn found Mr. Mata's conduct threatening, closing the door was a standard practice at HHHC during performance-related discussions and Harasyn's supervisor was present and did not believe she was in any danger. And while Mr. Mata's prior comments were rude and inappropriate, they would not cause a reasonable employee to quit their employment and become unemployed before finding another position of employment. Harasyn never formally complained to her supervisor about any of Mr. Mata's comments and chose to quit instead of attempting to remedy her conflict with Mr. Mata. While the average,

reasonable worker might be annoyed with her boss because of his rude comments, and might file a formal complaint because of the yelling, the incidents are not so compelling or substantial that an average person would quit and become unemployed rather than stay and continue her employment or continue working until she is able to find another job.

Affirmed.

JESSON, Judge (dissenting)

I respectfully dissent.

Power differentials matter. When a lower-level employee is yelled at by an owner of the company she works for—who is standing two to three feet away from her using profanity—it is reasonable that the employee would quit and become unemployed rather than remain in her position. And that is what happened here. Consider the factual findings of the ULJ:

Around 3:30 p.m. on February 7, 2018, Harasyn was on her way to Wing’s office to ask a question about a task he had assigned her. Before she got to Wing’s office, she talked with a coworker for a few minutes about the flu. The conversation did not relate to work. After this conversation, as Harasyn entered Wing’s office, company co-owner Mark Mata entered behind her and shut the door. With his hand on the closed door, *Mata loudly and angrily berated Harasyn* for spending time on personal conversations after having been out for two days. (Harasyn had been out sick for two workdays preceding February 7.) He told her that other employees were overloaded with work because of her absence, and that she needed to focus on work. Mata then said, “*if you don’t like what I’m saying you can f---ing leave anytime! Do you understand me?*”

The ULJ further found that Harasyn resigned because of this February 7 incident. And the ULJ concluded that Mata’s behavior was inappropriate and disproportionate to Harasyn’s conduct. That conclusion is supported by the record. Brad Wing, Human Resources Manager and Harasyn’s supervisor, witnessed the incident. He testified that during his 14 years at the company he had “never seen that out of Mark [Mata] that, that, um, I guess that level of anger or being upset or speak to anyone like that.” Even Mata’s

wife, the co-owner of the company, agreed that Mata's response was not proportionate to Harasyn's conduct. "I think emotions . . . got the best of him that day," she testified.

Where I differ with the ULJ and the majority is the conclusion that these facts would not cause the average, reasonable worker to quit employment. Minn. Stat. § 268.095, subd. 3(a)(1)-(3) (2018). We review the question of whether an employee had good cause to quit de novo. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 883 (Minn. App. 2012). While I agree that this single incident would not constitute a good reason caused by the employer for quitting if a co-worker initiated this outburst, those are not the facts before us.

Mata was the co-owner of the company. The other co-owner was his wife of many years. We have a power differential between a company owner and an administrative assistant which would lead the average, reasonable administrative assistant to think they had no recourse but to leave the job. No way of addressing what the ULJ characterized as inappropriate conduct: "loudly and angrily berat[ing]" an employee with profanity in a disproportionate manner. No independent human resources department to complain to. (In fact, the director of human resources witnessed the outburst, did not intervene and later apologized to Harasyn.) No place to turn.

Accordingly, I would conclude that where an owner of a company verbally berated an employee using profanity in front of that company's human resources manager, an average, reasonable worker would quit, rather than remain in that position. I would reverse.